

House Demolition

“Any destruction by the Occupying Power of real or personal property belonging... to private persons... is prohibited, except where such destruction is rendered absolutely necessary by military operations.” (Art. 53, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949))

The homes of hundreds of families have been demolished since the beginning of the present Intifada, as a result of the policy of “clearing,” which punishes residents living in the area where an attack took place, and as a result of the policy of punishing families for attacks carried out by their relatives. With the IDF invasion of the PA territories, the use of demolition of residential areas “for security reasons” spread from the Gaza Strip to Jenin and Nablus. Faced with the inability to prevent attacks, even after the IDF’s reoccupation of the West Bank, Israel began demolishing home after home where family members of attack suspects lived. HaMoked submitted a series of petitions to the HCJ in order to require the IDF to observe the procedure of giving advance notice of a demolition, based on an HCJ ruling from the previous Intifada: to enable families living in houses slated for demolition to set forth their arguments with the goal of lessening the severity of the decree and giving them time to remove their possessions from the house.

The “Clearing” Policy

“Clearing”, the main aspect of which is razing wide expanses of land using bulldozers, has been implemented since the beginning of the present Intifada, and has led to the uprooting of hundreds of trees, the destruction of thousands of acres of agricultural produce, and the demolition of entire neighborhoods. Until the IDF invasion of PA territories this year “clearing” of built-up areas occurred primarily in the Gaza Strip. During the last six months, the IDF has demolished dozens of houses in Gaza, on a few moments’ notice, and has left hundreds of people without shelter, clothing or food.



HCJ

On 14 March, IDF bulldozers began destroying buildings in the al-Mufraqa area, near the Netzarim settlement in the Gaza Strip. The demolition of houses came shortly after an explosion occurred in the area that caused property damage. As in the past, and in violation of the State’s commitment from a previous HCJ petition, the bulldozers began their work of destruction without allowing the homeowners any possibility of removing their personal possessions or appealing the decision to demolish their homes. That same day, a petition had been submitted to the HCJ by B.W., a resident of the area, and by The Palestinian Human Rights Center – Gaza, PHR and HaMoked, against the continued mass destruction of houses, and demanding that the right of home owners to present their arguments against the demolition to the authorities be upheld. In its response, which received the status of a ruling, the State promised to give advance warning of demolition which could be appealed before the military commander and should that be rejected, 48 additional hours would be given prior to demolition in order to enable the family to petition the HCJ. This was to be the procedure, unless it was not possible due to “operational reasons.” (File 17501)

The pathetic results of wholesale house demolition for “security reasons” were revealed in the Jenin refugee camp when, during ‘Operation Defensive Shield,’ and following the difficult battle that cost dearly in blood, IDF bulldozers began demolishing dozens of homes, sometimes without any warning to their residents, some of whom who were unable to save even themselves. The pictures from the area, and the testimony of camp residents and soldiers present, left no room for doubt that houses were demolished with no regard for the lives of those who lived therein.²⁷ The first requests from residents of the camp arrived just a few days following the demolition. HaMoked had no option but to act on behalf of those who remained trapped under the ruins of their homes. Following elaborate clarifications with the families, and after the IDF refused to send a Home Front rescue unit with extensive experience with rescuing trapped persons around the world to the camp, HaMoked submitted a petition to the HCJ demanding that the State bring this unit to the refugee camp. The State promised in court that the rescue unit would work in the camp, but to this day, no information has been received from the IDF regarding the extent of its activity there.



HCJ

On Sunday, 7 April, an IDF bulldozer began demolishing the house of P.A. a woman approximately 60 years old, in the Jenin refugee camp. Her son managed to flee the house but P.A., confined to her bed, and her daughter-in-law, remained behind. Her family members believed her to be dead after hearing rumors regarding the bodies of women lying in the street where the house was located. At the end of that week, P.A.’s grandson heard that cries for help were coming from women buried under the ruins of the houses. Since it was not possible to set out for the location due to the curfew, the grandson contacted HaMoked, which was in contact with the army during Friday night and Saturday, with the goal of locating and rescuing the women, but in vain. The Coordination Officer in Jenin went to the site during the afternoon

²⁷ Operation Defensive Shield: Soldiers’ Testimonies, Palestinian’s Testimonies, B’Tselem, 2002, pp. 12-13.

and called to the women, but heard nothing. According to him, he was himself unable to find the place where the house had stood, even though its exact location was sent by fax, since “the area is completely razed... .”

HaMoked demanded that a special unit skilled in location and rescue of persons buried under rubble be sent to the site, but until Saturday evening, no information was sent to HaMoked that such a unit was in the area and trying to locate the two women. Moreover, the official response of the army indicated that only when precise information is conveyed, and only when the safety of the rescue crew is assured, will it go into the field. At 22:30 HaMoked submitted a petition to the HCJ, requesting that the Defense Minister be obligated to order dispatch of the special Home Front rescue unit for location and rescue of any living person buried under rubble in the Jenin refugee camp. In court, the IDF committed the Home Front rescue unit to work in the field in the refugee camp and searching for those buried under rubble, not only when accurate information was available, but also based on the professional experience of its personnel. **(File 17767)**

Punishment of the Families of Attack Perpetrators

As with the idea of deportation, demolishing the home of families of those who perpetrate attacks was raised as a tool for fighting the suicide attacks. Thirty-one homes were demolished in punitive acts since the beginning of the Intifada through 14 August,²⁸ most with no order issued, without enabling the families to present their arguments against demolition of their homes and without providing time to remove possessions from the house. For these reasons, and due to the harsh results, every request made to HaMoked was followed up urgently, even if there was only a suspicion.



HCJ

In the beginning of November 2001, A.A.'s brother was killed during an IDF assassination operation. A day after the assassination, soldiers entered the village of Tal in the Nablus area, evacuated the family out of the home, and informed them of the intention to demolish the house. A.A. contacted HaMoked, which demanded that the IDF not demolish the home until the family's right to appeal was realized. The IDF responded that there was no intention of demolishing the house. Two months later, on Friday, 4 January 2002, IDF soldiers again entered the village, removed A.A.'s family from their home, and told them that they intended to demolish the house. This time, a tractor that began destroying the staircase accompanied the soldiers. HaMoked feverishly attempted to clarify with the IDF, but to no avail. With no commitment on the part of the authorities, HaMoked immediately went to the HCJ with a request to issue a restraining order against the demolition and to require the IDF to hold a hearing. In the appeal hearing, the State submitted a number of facts that led HaMoked to withdraw the petition: among other things, it was reported that the house contained a large quantity of weapons and findings were reported attesting that the house also served as an explosives laboratory. This ostensibly dissociated the demolition from an act intended as a punishment for the actions of the brother. Ultimately, the IDF left the village prior to the petition hearing, and the house was not demolished. It later became clear that the 'large quantity' of weapons found was one rifle and a number of bullets, and that other details submitted by the State during the hearing were inaccurate. In light of this, HaMoked requested a clarification from the State Attorney's Office as to why facts that did not correspond with the reality at the time were presented in court. The State Attorney's clarification is still pending. **(File 16629)**

The legal arguments that serve as the basis of HaMoked's petitions against house demolitions to the HCJ relate to the IDF Area Commander's obligation to follow fair procedures and exercise reasonable judgment. These obligations include issuing an order based on reliable evidence, granting the family the right to a hearing and to appeal, and preserving the principle of proportionality to minimize the harm caused to innocent persons.



HCJ

In the early morning hours of 12 March, IDF forces entered the al-A'mari refugee camp on the outskirts of Ramallah. S.A. escaped from the soldiers, as did most of the male residents of the camp. Later, the media publicized that the house where he and his sister, who had committed suicide in an attack in a Jerusalem not long before, had been demolished by IDF soldiers. The house was home to S.A., his two brothers, their wives, their mother and their children, aged 6 months to 8 years. Later, it was learned that the news items regarding demolition of the house were premature and that it was still standing. Immediately after the request was received, HaMoked contacted the IDF commander of the West Bank, who has the authority to order the demolition of homes, and the State Attorney's Office. When the request was not answered, HaMoked petitioned the HCJ, requesting issuance of an order that would prohibit the IDF from demolishing S.A.'s house, until he and his brothers could appeal. The High Court of Justice issued an

²⁸According to data provided by B'Tselem, www.btselem.org.

interim order as requested, and in light of the State's response that it had no intention of demolishing the house, and the withdraw of IDF troops from Ramallah on 19 March, the petition was rejected. **(File 17330)**



HCJ

At the same time that the decision to deport the families of those suspected of carrying out attacks was made, the IDF began a sweeping house demolition maneuver. On the night when the family members of the wanted persons were detained, against three of whom deportation orders were issued, the family homes were demolished. During the first four days of August, nine additional homes were demolished in the West Bank. HaMoked submitted petitions to the HCJ in the name of 35 families who had earlier requested assistance in returning the bodies of their family members who had committed suicide attacks. After both collective petitions were rejected, HaMoked submitted individual petitions regarding additional families. These petitions were also rejected. The HCJ justices stated in the hearing that the place for realizing the right to make their arguments was not the HCJ, and that each family could lodge a request with the IDF Area Commander in writing, specifying the particular circumstances. Thus, when the commander is about to issue a particular demolition order, he can check what is written in the family's letter and rule whether or not to proceed with the demolition. This HCJ decision almost completely obviated the possibility of appealing to the court, unless outstandingly exceptional circumstances prevail regarding a certain house. HaMoked will soon be again turning to the HCJ, along with ACRI, with a request to hold an additional and expanded hearing.